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No. 847

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

SETRAK K. BOYAJIAN, individually
and doing business as
PRECISION TESTING LABORATORIES,
Petitioner,

vs.

OLD COLONY ENVELOPE CO., INC.
and STEIN HALL & CO., INC.,
Respondents.

ON ORDER DENYING PETITION FOR WRIT OF CERTIORARI

PETITION FOR REHEARING

SETRAK K. BOYAJIAN,
Petitioner.

P. O. Box 973,
Worcester, Massachusetts, 01601.

May 1, 1964.

KENDRICK PRINTING CO., WESTBORO, MASS.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that this Court grant rehearing of its order of April 6, 1964, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit in the above-entitled cause as prayed for in the petition filed on February 18, 1964, restricted to the grounds below specified, available to petitioner although not previously presented (e.g., *Schriber-Schroth Co. v. Cleveland Trust Co.*, 305 U.S. 47, 59).

PUBLICATIONS AND STATUTORY PROVISIONS

"Directory of American Judges." By Charles Liebman. Published by American Directory, A Corporation, Chicago, 1955:

"WYZANSKI, Charles Edward, Jr.

"Judge, United States District Court, District of Massachusetts. Assumed office January 26, 1942, . . . assoc. Ropes, Gray, Best, Coolidge & Rugg, 1931-33, partn. 1938-41. . . ."

28 U.S.C.A. 455.

"Interest of justice or judge

"Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, . . . , or is so related to *or connected with* any party *or his attorney as to render it improper* . . . for him to sit on the trial, appeal, or other proceeding herein." (Emphases added.)

REASON FOR GRANTING REHEARING AND ISSUING THE WRIT

When the District Judge, the Honorable Charles E. Wyzanski, Jr., was appointed to the Bench, and just before he took office therein, on January 26, 1942, he was a partner in the law firm of Ropes, Gray, Best, Coolidge & Rugg (now known as "Ropes & Gray"). See *Directory of American Judges*, supra. The law firm Ropes & Gray is, and it has been since the beginning on December 30, 1957, attorneys of record for plaintiffs in this case (RA.11) in the Courts below, including the District Court presided by said Honorable Charles E. Wyzanski, Jr. There is no allegation, or any intimation or insinuation whatsoever, in this petition that any pecuniary interest between said Ropes & Gray and

said Honorable Charles E. Wyzanski, Jr., exists, or has ever existed since said 1942. But, on information and belief, strong social and professional ties between the said law firm and said District Judge, mutually reminescent of their old associations, currently exist, and have existed since before the said beginning of this case, wielding great loyalty and prestige power stronger than any definable pecuniary interest, and thereby creating strong bias and prejudice in the mind of said District Judge against petitioner and in favor of respondents and unconsciously influencing his judgment in making an obviously wrong and arbitrary decision, though believing it to be a correct decision. Petitioner did not discover the existence of such ties until it was too late for him to proceed under 28 U.S.C.A. 144. With due regard for the learned District Judge's well-deserved confidence in his remaining impartial under any and all circumstances, it was, in view of matter above presented, improper under 28 U.S.C.A. 455, supra, for him to sit in the proceedings in this case in the District Court, and such sitting did not constitute the exercise of sound judicial discretion in view of the arbitrary nature of the decision which calls for reversal and ought to have been reversed by the Court of Appeals. Facts further justifying the granting of the rehearing and issuing the writ will be found in the petition for the writ and the record filed therewith. Other facts will be presented upon issuance of the writ.

CONCLUSION

For the reason set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the First Circuit.

Respectfully submitted,

Signed .....

SETRAK K. BOYAJIAN,

Petitioner.

CERTIFICATE OF PETITIONER

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

Signed .....

SETRAK K. BOYAJIAN,
Petitioner.

May 1, 1964.